IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 835 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

MUNICIPAL COMMISSIONER,AHMEDABAD MUNICIPAL CORPORATION

Versus

MANGARAM TAMAKIMAL SINDHI

Appearance:

MR RR MARSHALL for Appellant

MR BHARAT B SHAH for Respondent No. 1

None present for Respondent No. 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 27/07/98

ORAL JUDGMENT

#. This appeal is filed by the appellant against the Award of the Motor Accident Claims Tribunal No.II (aux.) at Ahmedabad in MACP No.276 of 1994 dated 1.12.94.

#. The facts of the case in brief are that on 8.1.94, the claimant-respondent No.1 was travelling in

autorickshaw No.GJ-1-T-3092 alongwith other passengers from Thakkarbapa Nagar to Kalupur vegetable market at about 3:30 am. The autorickshaw came near Nirmalpura cross roads. At that time, an ambulance came from the southern side and dashed with the back side of autorickshaw. As a result thereof, autorickshaw turned turtuled. Ambulance stopped after 200 to 300 ft. travelling. As this accident has taken place due to rash and negligent driving of the driver (respondent No.2) of the ambulance which belongs to the Ahmedabad Municipal Corporation, the claimant-respondent No.1 filed Motor Accident Claim Petition No.276 of 1994 before the tribunal. Under section 140 of the Motor Vehicles Act, the Tribunal has awarded to the claimant Rs.12,000/= by way of interim compensation. The claimant-respondent No.1 sustained injury to his nose, there was profuse bleeding therefrom, and he sustained fracture in left thigh. He was admitted in Smt.Shardaben Lalbhai Municipal General Hospital for treatment and was operated there. Thereafter, he had plaster for a long time. He was again admitted for one day, i.e. from 17.8.94 to 18..8.94 and thereafter for 14 days, i.e. from 28.10.94 to 11.11.94 in the hospital. The claimant-respondent No.1 stated that he was doing business of wholesale vegetables and he was earning about Rs.60/= to Rs.70/= per day and he sustained permanent disability and he is not able to work properly. He is no able to run his business. He is having pain in the left thigh. He claimed in all, Rs.1,00,000/= by way of compensation.

#. The appellant contested the claim petition of the claimant-respondent No.1 by filing written statement. The appellant came up with a case that there was no negligence on the part of the driver of the ambulance. In fact, the accident has taken place due to rash and negligent driving on the part of the autorickshaw driver. The driver has not filed written statement. On the basis of pleadings of the parties, the Tribunal has framed as many as four issues in this case, which read as under:

(1) Whether it is proved that accident had taken place due to rash and negligent driving of opponent No.2?

(2) Whether it is proved that applicant received injury during the accident?

(3) Whether applicant is entitled to get compensation? If yes, what amount and from whom?

(4) What order?

Under the impugned award, the Tribunal held that the accident has resulted due to sole negligence of the driver of the vehicle of the appellant. The rickshaw driver was not found negligent at all. The Tribunal has awarded compensation under different heads to the claimant-respondent No.1, the details of which are as under:

	Rs.
1. Medical expenses	10,000/=
2. Other expenses, i.e. for Attendant charges, Transportation charges, Special diet, and other charges.	5,000/=
3. Loss of Income	18,000/=
4. Future loss of income	32,400/=
5. Pain, shock and suffering	20,000/=
Total amount:	85,400/=
Less: Amount already received with interest u/s.140 of the M.V. Act	12,000/=
Net amount:	73,400/=

#. So from the amount of compensation, Rs.12,000/= were deducted, i.e. the amount of interim compensation which was given to the claimant-respondent No.1 under Section 140 of the Motor Vehicles Act, and the award has been passed for the amount of Rs.73,400/= with interest thereon at the rate of 15% p.a., and costs have also been awarded. Hence this appeal before this Court.

#. The learned counsel for the appellant contended that the Tribunal has committed serious error in holding the driver of the ambulance to be 100% negligent in driving his vehicle and making the appellant liable to pay the compensation. He then contended that the driver of the autorickshaw was wholly responsible for this accident and the appellant could not have been fastened with this heavy liability. In the alternative, the learned counsel for the appellant urged that even the negligence of the driver of the autorickshaw is not taken to be 100% then to some extent his negligence is there in the accident

and to that extent the amount of compensation should have been disallowed to the claimant-respondent No.1. Challenging the quantum of compensation awarded to the claimant-respondent No.1, the learned counsel for the appellant firstly contended that the figure of Rs.5,000/= which has been awarded under the head "other expenses, i.e. for attendant charges, transportation charges, special diet, and other charges" has no factual basis as for this no evidence has been produced. Moreover, when under the head, "medical expenses" Rs.10,000/= have been awarded, this figure would have taken care of these expenses also. Next contention has been made against the award of Rs.18,000/= under the head, "Loss of income" by making a grievance that the respondent No.1 has failed to establish that he could not work for one year. It is further contended that looking to the nature of injury which is sustained by claimant-respondent No.1, it is difficult to accept that he could not have worked for one year. Attacking on the amount which has been awarded under the head, "future loss of income", the learned counsel for the appellant made threefold contentions. Firstly, it is contended that the income of Rs.1,500/= p.m. which has been assessed has not been established by producing evidence by the defendant-respondent No.1. Second limb of this attack is that physical disability taken at the rate of 15% for body as a whole is towards higher side. The third limb of attack is that multiplier of 12 adopted is also towards the higher side. However, the learned counsel for the appellant has not challenged the amount of compensation awarded under the head of "pain, shock and suffering".

#. On the other hand, the learned counsel for the claimant-respondent No.1 contended that in the present case, the trial Court has passed a just and reasonable award to which interference may not be made by this Court. It is next contended that the income of the claimant was stated to be Rs.60/= to Rs.70/= per day but it was taken to be only Rs.50/= per day which is towards the lower side. The Tribunal, for taking the income of the claimant-respondent No.1 only of Rs.50/= per day has not given any reason. Negligence is not attributable to the autorickshaw driver. Otherwise also, the Tribunal has decided the question of negligence of the driver of the ambulance after appreciating evidence of the parties in which normally this Court may not interfere. Physical disability which has been taken to be of 15% for the body as a whole is not towards the higher side. This was taken on the basis of the expert evidence and to which no exception can be taken. In fact, much more amount has been spent under the head of medical and other expenses

and the amount awarded is towards lower side.

#. I have given my thoughtful considerations to the submissions made by learned counsel for the parties.

#. Re.: Negligence of driver of ambulance:
The learned counsel for the appellant has not disputed the fact that the autorickshaw going from East to West and the ambulance was going from South to North. The accident took place at the circle of cross roads. The back portion of autorickshaw and front portion of ambulance were damaged. There is no break mark on the spot. The driver of ambulance was prosecuted and convicted for the offences under section 279, 337 and 338 of Indian Penal code and under Section 117 and 184 of the Motor Vehicles Act. However, instead of punishment, he was given the benefit of Probation of Offenders Act. The claimant-respondent No.1 deposed on oath that the ambulance belonging to the appellant which was driven by respondent No.2 dashed with the back side of the autorickshaw and autorickshaw turned turtuled. The autorickshaw driver was also examined in this case at ex.47. He also deposed that ambulance came from left side and dashed with his autorickshaw on back side and as a result thereof, the autorickshaw turned turtuled. The ambulance came all of a sudden with an excessive speed. These witnesses were not cross-examined by the appellant. So statements made by them remained unchallenged. The appellant examined its driver, the respondent No.2 herein at ex.58 and he deposed that autorickshaw came from left side in full speed. He applied brakes and autorickshaw dashed with front side of ambulance. The learned Tribunal, in view of this contradictory evidence of two drivers who were throwing negligence on each other, considered the Panchnama ex.28. The autorickshaw was damaged from back side and ambulance from front side. Absence of break marks on the site clearly negatives the statement of respondent No.2 that he applied brakes. The judgment of the criminal Court may not be relevant, but it is relevant for the purpose of credibility of a witness. The driver of the ambulance has deposed in his statement that he was prosecuted and convicted for this accident by the criminal court. On the record of the proceedings of the claim petition, the judgment of the criminal court has been produced as ex.29, and therefrom it is clear that he was convicted for this accident though it is a different matter that instead of sending him to jail, he was giving benefit of the Probation of Offenders Act. The Tribunal has to consider which of the versions as given by the two drivers has to be accepted. The Tribunal has not believed the statement of the driver

of the ambulance and rightly so. First of all, he is not wholly a worthy witness. Secondly, the statement of the autorickshaw driver and the claimant remained unchallenged as the appellant has not made any cross-examination. Apart from this, the evidence of the autorickshaw driver found corroboration from the Panchnama as well as the existing situation of site. Taking into consideration the totality of the facts of this case, the Tribunal has not committed any error, much less any illegality in holding that because of rash and negligent driving on the part of the driver of the ambulance, the accident has resulted.

#. Re.: Quantum of compensation :
From the statement of the claimant, I find that he received injury, i.e. fracture in the left thigh. He remained as an indoor patient because of this injury and he was operated there. A steel rod was installed. He was discharged with plaster in the left thigh. His statements are there that he could not work for 17 to 18 months because of this injury. He further stated that he spent about Rs.15,000/= to Rs.20,000/= for medical expenses. He is limping. He cannot sit by square legs nor he could work for long time. He made a statement that he is earning Rs.50/= to Rs.60/= per day. From the medical certificates produced on the record, I find that the claimant-respondent No.1 suffered fracture in shaft femur with other injuries on nose etc. He remained in hospital for about 27 days. He was operated and a steel rod was installed. In the presence of the fact that, (i) the claimant-respondent No.1 remained as indoor patient for 27 days, (ii) he had to undergone an operation, (iii) a steel plate was inserted, and plaster was made, the amount of Rs.10,000/= for medical expenses and Rs.5,000/= for other expenses incidental and ancillary to the treatment cannot be said to be towards the higher side. The claimant-respondent No.1 made a statement that he incurred Rs.15,000/= to Rs.20,000/= towards medical expenses and there is no evidence produced in rebuttal but still the Tribunal has awarded Rs.10,000/= under the head, "Medical Expenses" and Rs.5,000/= towards "other expenses". This amount under these two heads, if considered from any angle cannot be said to be towards higher side.

##. Re.: Daily income of the claimant-respondent No.1:
It is true that the claimant-respondent No.1 has not produced any specific evidence but it is equally true that there is no contrary evidence to his statement that he was doing business of wholesale vegetables. So if we go by the nature of business, it is difficult to

disbelieve that he would not have been earning Rs.60/= to Rs.70/= per day. It appears to be a case where for the undisclosed reasons, possibly the claimant-respondent No.1 has stated his income to be lower than what he otherwise actually would have been earning. The tribunal has taken his daily income only of Rs.50/= and to which no exception may be taken. To take figure of Rs.1500/= per month, as his income, the Tribunal has not committed any illegality which calls for any interference of this Court.

##. Re.: Assessment of physical disability:
Much emphasis has been laid by the learned counsel for the appellant on the fact that the assessment of the physical disability of the claimant-respondent No.1 at the rate of 15% for body as a whole is towards higher side. From the document ex.57, a certificate of the Doctor, I find that the claimant-respondent has permanent functional disability of 18% for a body as a whole. The medical expert, doctor, under document ex.57, opined that the claimant-respondent No.1 has sustained permanent partial disability of 35% approximately of left lower limb. On the basis of this medical expert opinion which is uncontroverted from the side of the appellant, the Tribunal has taken physical disability for body as a whole of the claimant-respondent No.1 towards lower side. Multiple of 12 also, looking to the age of the claimant-respondent No.1, cannot be said to be towards higher side.

##. The net result of the aforesaid discussion is that I do not find any illegality in the award of the Tribunal which calls for interference of this Court. In the result, this Appeal fails and the same is dismissed.

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(sunil)